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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,975	02/27/2002	Brent S. Nelson	876P148	6913

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COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD
SUITE 2850
200 WEST ADAMS STREET
CHICAGO, IL 60606

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,975

Applicant(s)

NELSON, BRENT S.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-9 and 21-31 are rejected under 35 U.S.C. 112, first paragraph. The specification appears to disclose that the prior art use of flat, "vacuum" panels were not sufficient and thus the prior art resorted to additional structures such as ribs, raised or recessed areas, etc. The specification appears to employ the prior art, flat vacuum panels without the additional structures. However, it is not clear what in the invention allows one to employ the prior art flat panels without the prior art additional structure, without creating the problems that the specification states were common to containers that just had the flat panels. Clarification and/or correction is requested.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al (4,877,141) in view of Sugiura et al (4,749,092), further in view of Ota (5,238,129) and Brody (5,740,934).

Hayashi et al, in their discussion of the prior art, discloses it was conventional to provide hot filled container comprising a bell portion, body portion and a base, wherein the bell portion includes a neck for passage of a hot filled food product there through

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and a shoulder portion between the neck and the body portion and wherein the body portion is "generally" rectangular in transverse cross-section and includes four panel sections, each of which was flat and flexible and exhibiting flexibility to move between a bowed and a planar configuration in response to temperature changes experienced by the container (which temperature changes cause changes in pressure). Claim 1 recites that the container has a bell portion and a shoulder portion ^{between} ~~were~~ the neck and body portion. It is not clear if this structure was part of the admission of prior art of Hayashi et al, i.e. it was conventional structure, or it was part of the improvement of Hayashi et al. In any case, to modify the admission of the prior art of Hayashi et al and provide the container with a bell portion in view of Hayashi et al; ^{showing} ~~having~~ this structure would have been obvious. It is noted that Hayashi et al disclose that the modified flat panels are an improvement over the prior art flat panels. But the flat panels without modification are taught by the Hayashi et al' admission of the prior art as well as Sugiura et al who also teaches the application of flat panels for absorbing pressure changes brought on by hot filling. Ota can be relied on as further evidence that it would have been obvious to employ a hot filled container with vacuum panels wherein the container could have any body cross-section including rectangular, square, etc. whereas Brady can be relied on as further evidence of flat pressure deflecting panels without any additional structure elements. In regard to claim 2, Singiura et al is considered to show smooth rounded corners. In regard to claim 3, which recites that the panels have no ribs, raised areas, etc., as noted above, the art taken as a whole teaches the conventionality of flat vacuum panels without the additional recited structure which the art has tended to use

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for better control of panel deflection. In regard to claims 4 and 5, Brady discloses labels engaging panel sections and to modify the combination and place the labels accordingly is therefore seen to have been obvious. Similarly, the extent of the label (claim 5) is seen to have been an obvious matter of choice and/or design. In regard to claim 9, it would have been obvious to position the mold line in opposing side panels, especially if the walls of the container are all essentially side panels, which would happen, if as the art discloses, the cross-section of the container is square/rectangular and there are four panels.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of De Groff et al (6,554,146) who teaches it would have been obvious to modify the combination and employ a blow molded polypropylene container since De Groff et al teaches it has advantages over PET in hot filling.

Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Groff et al (6,554,146) in view of applicants admission of the prior art, further in view of Visioli (5,897,901), Wright et al (5,616,353).

In regard to claims 10-12, De Groff et al discloses a blow molded, hot fill, multi-layer plastic container comprising an inner layer, ^{reground}~~required~~ layer, adhesive layer, ethylene vinyl alcohol barrier layer, an adhesive layer and an outer polypropylene layer. Claim 10 recites a ^{inner}~~nylon~~ layer whereas De Groff et al discloses polypropylene. As evidenced by Visioli, applicant was not the first to recognize the polyolefin's caused scalping and that polyamides including amorphous nylon should be used as the food

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contact layer because it prevents scalping. To modify De Groff et al and employ amorphous polyamide as the food contact layer for its art recognized and applicant's intended function would therefore have been obvious. Applicant's admission of the prior art can be relied on to teach it would have been obvious to employ an adhesive layer between the inner layer and the structural supporting ^{regrind} ~~regional~~ layer. In regard to claims 13-15, which recite the percentage of layer versus the wall, the particular amounts of each layer is seen to have been an obvious result effective variable. That is, one would use enough adhesive for its function of bonding, enough ^{regrind} ~~regional~~ for container support, etc. See e.g. figures ⁸ ~~8~~ of Hayashi et al wherein the relative thickness of the layers are shown. Wright et al can be relied on as further evidence of polyamide as a food contact layer.

Claims 21-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 6-8 above, and further in view of applicant's admission of the prior art, Visioli and Wright et al who are applied as above in claims 10-20.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-¹³⁹⁸ ~~1410~~. The fax phone number for the organization where this application is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh
June 17, 2004


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
7/13/04